

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15168 of Lewis R. Murray, pursuant to 11 DCMR 3108.1, for a special exception under Section 508 to establish the offices of an international organization, non-profit organization, labor union, architect, dentist, doctor, engineer, lawyer, or similar professional person in the basement through the third floor in an existing 10-unit apartment house in an SP-2 District at premises 1208 M Street, N.W., (Square 282, Lot 31).

HEARING DATE: November 11, 1989 and November 14, 1990
DECISION DATE: December 6, 1989 and December 5, 1990

ORDER IN REHEARING

FINDINGS OF FACT:

1. The Board initially heard this case on November 8, 1989. Because of extenuating circumstances, neither the applicant nor his attorney was able to attend. The applicant's architect presented the application but was unable to address all issues raised by the Board. At its public meeting of December 6, 1989, the Board voted to deny the application. In making its decision, the Board considered whether allowing the proposed use would tip the balance in favor of office uses over residential uses in SP zones. The Board was of the opinion that the balance would be tipped and the general purpose and intent of the Zoning Regulations would be impaired.

By letter dated March 9, 1990, the applicant requested that the Board waive the time requirement for filing motions, open the record and grant a rehearing of the application. At its April 4, 1990 public meeting, the Board denied the waiver request, indicating that the applicant may file a motion for reconsideration within ten days after the Board's final Order is issued. The final Order was issued on August 17, 1990. On August 28, 1990, the applicant moved for reconsideration and rehearing. On September 5, 1990, the Board granted the motion and a new hearing was scheduled for November 14, 1990. As a preliminary matter, the Board decided not to give weight to evidence which addressed the neighborhood stability of the SP District in light of the Court of Appeals case Wheeler vs. District of Columbia Board of Zoning Adjustment, 395 A.2nd 85 (1987). In Wheeler, the Court decided that neighborhood stability is not an issue to be decided by the Board. Once the Board determines that the use and structure meet the requirements of Section 508 of the Zoning Regulations it follows that the application is consistent with the designed purpose of the special purpose district.

2. The site is located on the south side of M Street, N.W. between 12th and 13th Streets and is known as 1208 M Street, N.W. The site is zoned SP-2.

3. The lot, which contains approximately 2,160 square feet, is rectangular in shape, and has a street frontage of approximately 24 feet. The rear of the lot abuts a 10-foot wide public alley having an access from 12th and 13th Streets.

4. The lot is improved with a 3-story with basement townhouse type structure. The structure was built in 1909 as a single family residence, and was reconfigured as a 10-unit apartment house in approximately 1940. The structure contains approximately 4,056 square feet of gross floor area. It is presently uninhabited.

5. The applicant requests special exception approval to use the subject property for professional offices. The applicant indicated that the interior of the building is presently in a deteriorated and uninhabitable condition. He proposes to renovate the building for use as offices for approximately 15 to 20 people. Three parking spaces will be provided at the rear of the site.

6. Pursuant to Section 508 of the Zoning Regulations, the Board may grant special exceptions for professional offices in SP-2 Districts if the applicant demonstrates that;

- (a) The use, height, bulk, and design are in harmony with the existing uses and structures on neighboring property;
- (b) the use does not create dangerous or other objectionable traffic conditions.

Also, the Board may require special treatment in the way of design, screening of buildings, accessory uses, signs, and other facilities as it shall deem necessary to protect the value of neighboring property.

Ultimately, the record must demonstrate that granting the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Maps, and will not affect adversely the use of neighboring property.

7. The applicants land planner testified that the use, height, bulk and design are compatible with existing uses and structures in the area.

8. The Board finds that a four-story apartment building abuts the site to the west. A parking lot owned by the District of Columbia Government and a ten-story structure housing the Horizon House Senior Citizens apartments and several offices of the

District of Columbia Government are to the east of the site. To the north, across the street from the site, is the Claridge Tower Senior Citizens apartment building which is owned and operated by the D.C. Department of Public and Assisted Housing. The immediate area surrounding the site is characterized by a mixture of office and residential buildings, townhouses converted to office uses, and single family residences converted to multi-family use. The land planner further testified that the proposed use is small-scale, low density office space that conforms to SP-2 guidelines. The use is therefore compatible with the use of existing properties nearby.

9. The Board finds, from evidence of record, that the design of the building is very similar to many other structures in the area.

10. The applicant's traffic engineer testified that the use will not create dangerous or other objectionable traffic conditions. He noted that there are eleven Metrobus routes within two block of the site and two Metrorail stations within five blocks of the site. He also noted that on M Street, two-hour residential permit parking is in effect and the spaces are generally fully occupied. The traffic consultant indicated that, with approximately 16 employees, only about three would drive to the site. In his view, the addition of three vehicles would have no effect on the level of service now provided. There would, therefore, be no adverse traffic impact. Because the three cars can park at the rear of the property, parking in the area will not be adversely affected.

11. Regarding special treatment that the Board may require, the applicant testified that there are no plans to alter the exterior appearance of the structure. Furthermore, any signage to be used would be small, flat and non-illuminating.

12. The Office of Planning (OP), by memorandum dated November 7, 1990 and through testimony at the hearing, recommended that the application be denied. After describing the property, the proposed use and uses in the surrounding area, OP expressed its opposition to the application for the following reasons:

- (a) At the time of this application, the Zoning Commission has before it a proposal to change this square from an SP-2 to a DD/R-5-D District. Final action is scheduled for December 1990. The proposed SP office use will not be in harmony with the existing residential character of the block and will have an adverse effect on the proposed zoning amendments.
- (b) The District of Columbia Generalized Land Use Map of the Comprehensive Plan for the National Capital includes the subject square in the high density residential land use

category. The Land Use Element of the Comprehensive Plan encourages the retention, improvement and expansion of the housing stock in the downtown area. An increased number of residential structures in the area have been converted to office uses in recent years and to allow the proposed use will constitute a further erosion of the residential component of the square. The residential use should be continued to maintain the appropriate land use mix in the immediate area.

- (c) The proposed office use is too large for this section of the city and it will create objectionable conditions for residents of the area. The proposed use represents an unnecessary intrusion of commuter traffic in the morning and evening peak hours and the presence of an empty building at night. The use is not conducive to public safety.
- (d) The SP-2 District in which the subject property is located is intended to act as a buffer between adjoining commercial and residential areas. It is designed to preserve, stabilize and protect areas adjacent to commercial districts that contain a mix of rowhouses, apartments, offices and institutions at a medium to high density. The proposed conversion of the building for office use would create an imbalance between the residential and office uses in the area.

13. Responding to the concerns of the Office of Planning, the Board finds as follows:

- (a) The Board cannot base its decision on proposed rezoning of the square. The Board must consider the application in light of the zoning of the property when the application is before the Board for decision.
- (b) The proposed office use is consistent with the intended purpose of the SP District to have a mix of uses. The square is not residentially zoned.
- (c) Evidence presented by the applicant is inconsistent with the view of the Office of Planning that the use is too large for the area and that there will be an adverse impact on the residents, traffic and safety.
- (d) In light of the Wheeler case, the Board shall not consider the balancing of residential versus office uses. The Board shall only require the applicant to meet the provisions of Section 508 and 3108 of the Zoning Regulations.

14. Other District of Columbia governmental agencies commented on the application. The Department of Housing and Community Development, by memorandum dated November 27, 1989, expressed opposition to the proposed application. The department raised the same concerns as those presented by the Office of Planning.

15. The Department of Finance and Revenue, by memorandum dated November 13, 1989, stated that replacement of apartment houses by office uses is a practice that should not be encouraged.

16. The Office of Business and Economic Development, the Fire Department and the Metropolitan Police Department expressed no objection to the application.

17. Advisory Neighborhood Commission (ANC) 2C, by letter dated November 8, 1990, recommended denial of the application. The ANC expressed its concern that to grant the application will set a precedent in which low and moderate income residents are displaced in favor of SP offices. In the ANC's opinion, this precedent is being set particularly in areas that the ANC feels should continue to be residential.

18. Because the application involves an SP District rather than a Residential District, the the Board disagrees with the views of the ANC and responds to the ANC in the same manner as in Finding No. 13. Additionally, professional offices are deemed to be compatible with matter-of-right uses in the SP District, provided the Board finds that the standards are met.

19. No other testimony was presented in support of or in opposition to the application.

20. The Board received six letters of support, three letters raising no objection and two letters in opposition to the application.

CONCLUSIONS OF LAW AND OPINION

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking a special exception to allow the conversion of a vacant apartment building into professional offices in an SP-2 District.

The granting of such a special exception requires a showing through substantial evidence that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property. The applicant must also meet the requirements of Section 508 regulating office uses in SP District.

The Board concludes that the applicant has met the standards for granting the requested relief.

The Board concludes that the area surrounding the subject property contains a mix of uses with structures of varying height, bulk and design. In the Board's opinion, the proposed use, height, bulk and design are in harmony with the existing uses and structure on neighboring property.

The Board concludes that the use proposed will not create dangerous or other objectionable traffic conditions.

Because the special purpose district is intended to have a mix of uses, the Board concludes that granting the application will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not affect adversely the use of neighboring property.

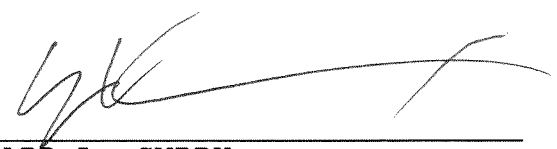
The Board concludes that it has given the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. The number of employees shall not exceed twenty.
2. The applicant shall provide three on-site parking spaces at the rear of the property.
3. Any sign advertising the proposed use shall be flush to the wall, non-illuminated and shall not exceed 144 square inches in size.

VOTE: 4-1 (Sheri M. Pruitt, Paula L. Jewell, Charles R. Norris and Carrie L. Thornhill to grant; John G. Parsons opposed to the motion by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



EDWARD L. CURRY
Executive Director

JAN 25 1991

FINAL DATE OF ORDER: _____

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PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15168Order/BHS

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION NO. 15168

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mailed to all parties, dated JAN 25 1991 and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and to is listed below:

Lewis Murray
8300 Kerry Road
Chevy Chase, Maryland 20815

John Epting, Esquire
Wilkes Artis Hedrick & Lane
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

Clifford Waddy, Chairperson
Advisory Neighborhood Commission 2C
Garrison Elem. School
1200 S Street, N.W., #201
Washington, D.C. 20009

A handwritten signature in dark ink, appearing to read "ELC", is written over a horizontal line.

EDWARD L. CURRY
Executive Director

DATE: JAN 25 1991

ATTESTAT/BHS